Anti-counterfeiting 2016
A Global Guide

BASCAP 25: raising the bar in the fight against counterfeiting
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CRITICAL DRIVER OF INNOVATION, GROWTH AND JOBS

Government efforts to stimulate economic growth and employment must include the critical role that IP plays in driving innovation, development and jobs. Now is the time to increase the resources committed to stopping the illegal trade in counterfeits and piracy. Learn more about joining BASCAP and making the fight against counterfeiting and piracy the #1 priority.

Business Action to Stop Counterfeiting and Piracy (BASCAP) connects and mobilizes businesses across industries, sectors and national borders in the fight against counterfeiting and piracy. Members include some of the largest and most recognized companies in the world—all with a common goal of stopping the trade in counterfeited and pirated goods and the associated economic and social harms associated with it.

Learn more at www.iccwbo.org/bascap
BASCAP 25: raising the bar in the fight against counterfeiting

Intellectual property plays an indispensable role in growing the economies of developed and developing countries all over the world; in spurring innovation; in giving large and small firms a range of tools to help drive success; and in benefiting consumers and society through a continuous stream of innovative, competitive products and services.

Conversely, failure to enforce and properly protect intellectual property can undermine these benefits, discourage innovation, weaken competitiveness and reduce the levels of foreign direct investment which a country can attract. Moreover, lack of strong IP enforcement can result in hundreds of thousands of job losses, expose consumers to dangerous products and open the door to organised criminal networks, which already play a worryingly prominent role in counterfeiting and piracy.

Need for effective and consistent IP enforcement

The need for effective IP enforcement regimes is more critical than ever in the face of the rapidly growing volume of counterfeit and pirated products.

The International Chamber of Commerce’s (ICC) Business Action to Stop Counterfeiting and Piracy (BASCAP) is deeply concerned by the growing levels of counterfeiting and piracy. The scale and gravity of the threat posed by this illicit practice deserve the attention of policy makers at the highest levels. While some countries have solid IP regimes in place and have taken steps to strengthen IP enforcement, there is still much that can be done.

To this end, ICC/BASCAP has developed a set of 25 Best Practices for IP Rights Enforcement (BASCAP 25), to provide a set of common elements which should be included in any effective IP enforcement regime. It is designed to help governments raise the bar when addressing the global challenge of counterfeiting and piracy by providing a basic checklist. This can be used to evaluate whether necessary regulations are in place to tackle issues that have historically undermined effective IP enforcement. The best practices set out in BASCAP 25 are drawn from an analysis of the essential elements of an effective and functioning IP enforcement regime and include lessons learned from BASCAP’s publication of recommendations tailored for Russia, Ukraine, Turkey, India and Kenya – all of which called for stronger and improved enforcement of IP rights.

Moreover, the best practices feature a number of recommendations which governments can take to mitigate the abuse of free trade zones, utilise proceeds of crime legislation as a tool to combat IP crime and strengthen the resilience of supply chain intermediaries to guard against the infiltration of fake and pirated products.
The right to transparency should include not just the infringer, but all parties shown to be involved in the illicit production, manufacture, distribution or provision of the infringing goods.

Increasing the quality of enforcement
BASCAP 25 recognises that an effective IP enforcement regime must be underpinned by a solid legal framework of customs, civil, criminal and internet enforcement rules. It summarises the essential elements which national governments should have in place in order to fight the global proliferation of counterfeiting and piracy. For example, a strong legal framework needs:

- robust rules on border measures, to address the cross-border traffic of fake goods;
- civil enforcement, for infringement matters between private entities;
- criminal enforcement measures, for more serious violations made wilfully and on a commercial scale by criminal actors; and
- digital environment measures, for specific infringements taking place on the Internet.

BASCAP 25 also provides key elements to establish enforcement practices which promote strong IP protection and to improve the international framework in which national governments can cooperate in the area of IP protection and enforcement.

Key elements

Customs enforcement
BASCAP 25 recognises that border enforcement is only as strong as the authority granted to customs officials. Moreover, the scope of this authority must be broad enough to seize infringing goods at the border and while they are in transit, rather than allowing obviously illicit products to be distributed domestically or in another market.

Consequently, BASCAP 25 calls for customs authorities to be empowered to take *ex officio* action – as well as acting at the request of rights holders – against suspected infringing goods when they are imported, exported, in transit and in all situations where they are under customs supervision, including in free trade zones. The best practices also call for the empowerment of customs officials to destroy goods that are suspected of infringing IP rights upon the rights holder’s request and without the need to institute court proceedings, where the declarant or holder of the shipment does not oppose this.

Civil enforcement
An important characteristic of a strong national IP enforcement regime is the adequacy of national courts or other competent authorities to take swift and effective action in response to rights holder complaints of infringement. BASCAP 25 suggests that rights holders should be permitted to obtain a court order requiring disclosure of the origin and distribution networks of infringing goods. In addition, the right to transparency should include not just the infringer, but all parties shown to be involved in the illicit production, manufacture, distribution or provision of the infringing goods.

An effective civil enforcement regime should also empower judicial authorities to order the seizure of goods that are suspected of infringing IP rights so as to prevent their entry into or movement within channels of commerce. This regime would empower judicial authorities to order, at the rights...
holder’s request, the destruction of infringing goods without compensation to the infringer.

Criminal enforcement
IP theft, in the forms of counterfeiting and piracy, is a criminal activity and warrants effective criminal penalties. The seizure and destruction of infringing products is a good start. Confiscating the financial proceeds of IP crime is an innovative legal solution designed to reduce the profitability of crime by cracking down on IP criminal profits and can have a much greater punitive effect than imprisonment. It is also important to empower law enforcement authorities to initiate investigations or legal actions against criminal IP offences without the need for a complaint.

Enforcement in the digital environment
The Internet, the digitisation of entertainment and media products and the growing trend for online shopping mean that IP enforcement in the digital environment can no longer be ignored. More effective prevention measures – such as automated tools for rapid notice and takedown, filtering and redress – are key to addressing relevant infringements in the digital environment. In the face of these new realities – and the growing risk to consumers – governments must establish ground rules, including effective parameters of liability for parties which provide or promote access to infringing materials.

Enforcement practices
Governments can take a number of steps to complement the legal, regulatory and judicial components of an effective IP enforcement regime. For instance, BASCAP 25 highlights the value of appointing a chief IP enforcement officer with high-level authority to raise the profile of this issue, oversee coordination of relevant government officials and agencies, and allocate necessary financial and personnel resources. Other good practices include promoting specialised IP skills training and expertise for law enforcement and justice officials.

International cooperation
Given the cross-border nature of the trade in counterfeit and pirated products, BASCAP 25 encourages an international approach whereby national governments help each other and cooperate with IP enforcement. Such practices include enhanced information sharing, particularly between law enforcement agents and border control agents, to better identify and target border inspections of shipments containing suspected counterfeit goods.

Intergovernmental organisations such as the World Trade Organisation (WTO), the World Intellectual Property Organisation and the World Customs Organisation can be effective partners for improving capacity
building and providing technical assistance to support the implementation and enforcement of IP rights.

**Spreading BASCAP 25: a journey to inform and educate**

The ICC has a long tradition of representing the views of the global business community on a wide range of issues and advocating those views in communications with national and international governmental bodies. The ICC and its representative bodies have become trusted sources for business and government on critical business and social issues, including the importance of protecting IP rights. BASCAP 25 has been developed as another tool to communicate with national and regional governments to encourage government leaders to recognise the need to make IP enforcement a priority issue and to help build more effective national and regional IP enforcement regimes. This can be achieved through engagement with individual countries and with regional government bodies. BASCAP is working with the ICC’s national committees worldwide to promote the best practices with policy makers in national capitals.

**Conclusion**

The ICC/BASCAP is dedicated to raising awareness of the global nature of counterfeiting and piracy and the need for higher standards of IP enforcement. The list of 25 best practices includes the essential elements for an effective legal framework on IP enforcement which every government should have in place to complement, for example, the obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property and existing national enforcement regimes.

The scale and gravity of counterfeiting and piracy undermine economic and social welfare worldwide and merit the attention of policy makers at the highest levels of government. To this end, the ICC/BASCAP appeals to government leaders to fortify their obligations to protect IP rights and strengthen their commitments to enforce laws against counterfeiting and piracy.

The ICC/BASCAP calls on government leaders to strengthen IP enforcement regimes with a new determination. Further, it calls on them to ensure that they adhere to all international IP treaties, to abolish all known domestic markets for counterfeit and pirated goods, and to step up efforts to protect and inform consumers about the harms of purchasing and consuming counterfeit and pirated products. We hope that BASCAP 25 will serve as a valuable blueprint for further progress and we stand ready to partner with national and regional government bodies to assist in this important work. WTR